

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE FOR THE TWENTIETH
JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE,
Plaintiff,

v.

FIRST NORTH AMERICAN NATIONAL
BANK a foreign corporation,

Defendant.

AGREED FINAL JUDGEMENT

Plaintiff, the State of Tennessee, by and through John Knox Walkup, the Attorney General and Reporter of the State of Tennessee at the request of the Division of Consumer Affairs of the Department of Commerce and Insurance, and Defendant, First North American National Bank (hereinafter referred to as "FNANB" or "Defendant"), as evidenced by their signatures, do consent to the entry of this Agreed Final Judgment ("Judgment" or "Order") and its provisions.

Plaintiff, State of Tennessee, commenced this action on December 1998, pursuant to the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101 *et seq.* ("Consumer Protection Act").

Defendant waives service of the Summons and Complaint and has appeared by and through its attorney, Bryan Krakauer of Sidley & Austin.

Plaintiff appears by and through its attorneys, John Knox Walkup, Attorney General and Reporter; Cynthia E. Kinser, Deputy Attorney General; and Carolyn U. Smith, Assistant Attorney General.

Plaintiff and Defendant have agreed on a basis for the settlement of the matters alleged in the Complaint,

and to the entry of this Agreed Final Judgment against Defendant without the need for trial or adjudication of any issue of law or fact.

Defendant, by entering into this Agreed Final Judgment, neither admits nor denies the allegations of the Complaint. Plaintiff and Defendant agree that this Agreed Final Judgment does not constitute evidence or an admission regarding the existence or non-existence of any issue, fact, or violation of any law alleged by Plaintiff.

Defendant recognizes and states that this Agreed Final Judgment is entered into voluntarily and that no promises or threats have been made by the Attorney General's Office or any member, officer, agent or representative thereof to induce it to enter into this Agreed Final Judgment, except as provided herein.

Plaintiff and Defendant waive any right they may have to appeal from this Agreed Final Judgment; and Defendant further agrees that they it will not oppose the entry of this Agreed Final Judgment on the ground it fails to comply with the Rules of Civil Procedure or any other grounds, and hereby waives any objections based thereon. The Defendant expressly waives ten (10) day notice of the State's intention to file an action pursuant to Tenn. Code Ann. § 47-18-108(a)(2). This is a Judgment for which execution may issue.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

I. JURISDICTION 1.1

This Court has jurisdiction of the subject matter of this action and of the parties. The Plaintiff's complaint in this matter states claims upon which relief may be granted under the provisions of the Tennessee Consumer Protection Act of 1977. Jurisdiction is retained for the purpose of enabling any party to this Agreed Final Judgment to apply to the Court for enforcement of compliance with this Agreed Final Judgment, to punish violations thereof, or to modify or clarify this Agreed Final Judgment. Circuit City Stores, Inc. agrees to submit to the personal and subject matter jurisdiction of this Court for the purposes of enforcing the injunction and monetary provisions against it. Circuit City Stores, Inc. waives the right to raise arguments or defenses associated with it not being a party to this action because Circuit City Stores, Inc. has agreed to be a party to which the injunctive and monetary provisions may be enforced. Circuit City Stores, Inc. has signed this Judgment to confirm it is submitting to this Court's jurisdiction.

II. VENUE

2.1 Pursuant to Tenn. Code Ann. § 47-18-207, venue as to all matters between the parties relating hereto or arising out of this Order is solely in the Chancery Court of Davidson County, Tennessee.

III. SCOPE

3.1 This Judgment shall apply to the practices of the Defendant in soliciting or enforcing Reaffirmation Agreements with Debtors.

IV. DEFINITIONS

4.1. For purposes of this Judgment, the following terms have the meanings set forth below:

A. "Affected Consumer" means each Debtor:

(1) who filed a petition for relief under Chapter 7 of the Bankruptcy Code and received a discharge of a debt incurred as the Debtor;

(2) who entered into a Reaffirmation Agreement with the Defendant (or with the Defendant and any other entity) during the period from January 1, 1992 to December 31, 1997; and,

(3) whose Reaffirmation Agreement was (a) not filed with the bankruptcy court, (b) was not timely filed with the bankruptcy court, or (c) was timely filed with the bankruptcy court and was either (i) disapproved or rejected by the bankruptcy court or not approved by such Court when necessary to result in the enforceability of such agreement or (ii) rescinded by the Debtor within the time provided by the Bankruptcy Code.

B. "Attorneys General Compliance Committee" means a committee composed of the representatives of the Attorneys General of California, Massachusetts and Tennessee.

C. "Bankruptcy Code" means the United States Bankruptcy Code, Title 11, United States Code, as amended from time to time.

D. "Conformed Reaffirmation Agreement" means a Reaffirmation Agreement that:

(1) is in writing and contains all of the disclosures required by Section 524(c)(2) of the Bankruptcy Code;

(2) is signed by the Debtor; (

3) either (a) is accompanied by a declaration signed by the Debtor's attorney that complies with Section 524(c)(3) of the Bankruptcy Code or (b) was approved by the bankruptcy court as evidenced by a bankruptcy court order;

(4) was entered before the Debtor was granted a discharge;

(5) has a court stamp showing timely filing with the bankruptcy court; and

(6) was not timely rescinded by the Debtor.

E. "Consumer Credit" means credit extended to a natural person primarily for personal, family or household purposes.

F. "Debtor" means any person who owes, owed or whom the Defendant contends or claims to owe, any obligation in connection with any extension of open end credit under a plan to finance the purchase of goods and services, including credit insurance, where the Defendant was or is the creditor, holder, and/or servicer under such plan.

G. "Defendant" means to the extent of its business within the scope of the paragraph 3.1, First North American National Bank as well as its subsidiaries; its successors and the assigns of all or substantially all the assets of its businesses; its officers, employees, agents and independent contractors; and any person with actual knowledge of this Judgment who acts in concert or participation with them.

H. "Internal Records Search" means an examination of all relevant customer records in the possession of Defendant and its representatives, including records maintained by private counsel and collection agencies to the extent they can be obtained, that refer to, or could reasonably lead to the discovery of a Reaffirmation Agreement.

I. "Judgment" or "Order" means this Agreed Final Judgment.

J. "Open end credit" means consumer credit extended pursuant to a plan as to which:

(1) the creditor reasonably contemplates repeated transactions;

(2) the creditor may impose a finance charge from time to time on an outstanding balance;
and

(3) the amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

K. "Parent" means Circuit City Stores, Inc.

L. "Reaffirmation Agreement" means a written agreement between a Defendant and a Debtor who has filed a petition under Chapter 7 of the Bankruptcy Code, the consideration for which, in whole or in part, is based on all or a portion of any pre-petition debt incurred as a Debtor.

V. INJUNCTION

5.1 Defendant is permanently enjoined and restrained from directly or indirectly engaging in any of the following:

A. Attempting to solicit or soliciting any Debtor who is the subject of a proceeding under the Bankruptcy Code to enter into a Reaffirmation Agreement without giving the Debtor or, if the Debtor is represented by counsel, the Debtor's attorney, a statement written in plain English, in at least 12-point type, containing the following information:

- (1) The Debtor is not required to reaffirm any debt;
- (2) If the Debtor reaffirms any debt, the amount of the debt reaffirmed will be subject to the same finance charge that is applied to outstanding balances under the credit agreement, or, at the Defendant's option, a lower finance charge disclosed by the Defendant.
- (3) If the Debtor reaffirms any debt, the Reaffirmation Agreement will be filed with the bankruptcy court. The Defendant obtaining the Reaffirmation Agreement will provide the Debtor, or, if the Debtor is represented by counsel, the Debtor's attorney, with a bankruptcy court date-stamped copy of the Reaffirmation Agreement. If the signed Reaffirmation Agreement could not be timely filed, that Defendant will return the original Reaffirmation Agreement, or, if the original was filed with the bankruptcy court, a date-stamped copy thereof, to the Debtor or, if the Debtor is represented by counsel, to his or her attorney, and the Reaffirmation Agreement will be void and of no effect.
- (4) The Debtor may rescind the Reaffirmation Agreement before the Debtor's discharge or within sixty (60) days of the filing of the Reaffirmation Agreement with the bankruptcy court, whichever is later.

Notwithstanding the foregoing, if the Defendant makes such solicitation through the Debtor's attorney and not the Debtor, the Defendant making the solicitation shall provide the statement described above to the Debtor's attorney and request that such statement be given to the Debtor; provided, however, that the Defendant making the solicitation shall provide the statement described above to the Debtor:

- (1) if the Defendant makes such solicitation through the Debtor's attorney and copies the Debtor on the solicitation; or
- (2) if at any point the Defendant solicits the Debtor directly. Nothing herein shall be construed to authorize the Defendant to contact a Debtor who is represented by an attorney if such contact is prohibited by law.

B. Making any untrue or misleading statement to any Debtor about the rights, obligations, benefits, or

consequences to the Debtor of not reaffirming all or any portion of the debt that the Defendant or the Debtor contends is owed or may be owed to the Defendant. This provision includes untrue or misleading statements concerning the existence of a security interest, the nondischargeability of a debt to a Defendant, the customer's right to obtain a discharge, the existence of alternatives to reaffirmation, and statements concerning the valuation of goods or the value of a Defendant's security interest in any goods that are not made in good faith, *e.g.*, honesty in fact.

C. Soliciting, obtaining, or enforcing any agreement from a Debtor to reaffirm a debt in violation of any provision of the Bankruptcy Code, including, without limitation, Sections 362(a)(6), 524(a)(2), (c), and (d); and 727(b) of the Bankruptcy Code.

D. Collecting or attempting to collect any debt of a Debtor (including any interest, fee, charge, or expenses incidental to the principal obligation) in violation of the Bankruptcy Code, including, without limitation, a debt that has been legally discharged in bankruptcy proceedings.

E. Failing to file all Reaffirmation Agreements the Defendant obtains from Debtors pursuant to Sections 524(c) and (d) of the Bankruptcy Code with the appropriate Bankruptcy Court, provided that the Reaffirmation Agreement is received by the Defendant not less than five (5) business days prior to the date that the Debtor's order of discharge is entered. This provision shall not apply if local bankruptcy rules or other applicable federal law prohibits creditors from filing Reaffirmation Agreements in a particular district.

F. In the event a Reaffirmation Agreement was not filed before discharge in accordance with paragraph 5.1 (E), failing to return the original Reaffirmation Agreement, or, if the original was filed with the bankruptcy court, a court date-stamped copy thereof, to the Debtor or, if the Debtor is represented by counsel, to his or her attorney, with a cover letter stating that the Reaffirmation Agreement is void and of no effect. This provision shall not apply if the Defendant does not have the original Reaffirmation Agreement because local bankruptcy rules or other applicable federal law prohibits creditors from filing Reaffirmation Agreements in a particular district and the original Reaffirmation Agreement was given either to the Debtor or the Debtor's attorney for filing with the bankruptcy court.

G. Failing to mail, as provided herein, a bankruptcy court date-stamped copy of the Reaffirmation Agreement and a notice, which may be in the form of a cover letter, printed in at least 12-point type, which shall contain the following disclosures, which shall be grouped together and set forth in a clear and conspicuous manner:

(1) that the Debtor's agreement to reaffirm a debt to the Defendant in an amount which the Defendant shall disclose in the notice has been filed with the bankruptcy court and that the Debtor will owe this amount to the Defendant after the bankruptcy case is over unless the Debtor cancels the Reaffirmation Agreement;

(2) that the Debtor was not required to reaffirm his or her debt and has the legal right to

cancel the Reaffirmation Agreement;

(3) that the Debtor may cancel the Reaffirmation Agreement by (a)a specified date which the Defendant shall disclose in the notice that is the date sixty (60)days after filing of the Reaffirmation Agreement or (b)the date the bankruptcy court enters an order of discharge, whichever happens later;

(4) that the Debtor may cancel his or her Reaffirmation Agreement by telephoning a cancellation to a toll-free telephone number shown on the cover letter or by sending a written cancellation to the Defendant at the address shown on the cover letter; and

(5) that no specific form is required to cancel the Reaffirmation Agreement.

The Defendant shall mail the bankruptcy court date-stamped Reaffirmation Agreement and the notice required by this paragraph by first-class mail, postage prepaid, to the *pro se* Debtor or, if the Debtor is represented by counsel, to the Debtor's attorney (and to the Debtor if the Debtor was copied on the solicitation letter specified in subsection 5.1(A) of this Article V or if the Debtor was solicited directly by the Defendant at any point to enter into a Reaffirmation Agreement), (i) within ten (10) business days of the Defendant's receiving the date-stamped copy of the Reaffirmation Agreement directly from the bankruptcy court (or, in the case of a *pro se* Debtor, within ten (10) business days after the Defendant receives notice of the bankruptcy court's approval of the *pro se* Debtor's Reaffirmation Agreement), or (ii) if the Reaffirmation Agreement is filed by the Debtor's attorney and obtained by the Defendant, within ten (10) business days after the Defendant obtains a bankruptcy court date-stamped copy of the Reaffirmation Agreement.

H. Representing or implying that nonpayment of any debt of a Debtor will result in, or threatening to take or taking any action to effect, the seizure, garnishment, attachment, retaking or sale of any property or wages of any person, unless the Defendant intends to take that action and the action is not prohibited by law.

I. Using a security interest with respect to the debt of a Debtor for the purpose of intimidation. For the purpose of this paragraph, "intimidation" does not include:

(1) a statement by the Defendant that it intends to take judicial action to seek to recover property if the Defendant intends to take that action and the action is not prohibited by law,

(2) the filing of secured claims in bankruptcy proceedings, or

(3) setting forth in written communications to Debtors or attorneys for Debtors that the Defendant claims a security interest in identified goods and requests a statement of intention pursuant to Section 521 of the Bankruptcy Code.

J. Reporting any adverse information to credit reporting agencies, or failing to request credit reporting agencies to remove any such adverse information previously reported to a credit reporting agency, concerning:

(1) any relief granted under this Judgment including payments to Affected Consumers, and the negation of Reaffirmation Agreements obtained contrary to law, and,

(2) the failure of a Debtor to perform under any agreement to reaffirm debt obtained contrary to law.

K. Ending a credit relationship with a Debtor based in whole or in part on the Defendant's relinquishment of its claims to reaffirmed debt, the payments to Affected Consumers, or other actions related to the Debtor that the Defendant is obliged to take under this Judgment.

L. For a period of five (5) years from the date this Judgment becomes effective, the Defendant shall provide a copy of the injunctive provisions of this Judgment to all current and future officers, agents, servants, employees, and attorneys having responsibilities for the recovery of debt from the Defendant's customers who have filed proceedings under Chapter 7 of the Bankruptcy Code ("Covered Persons"), and shall obtain from the person or entity receiving a copy of the injunctive provisions a signed and dated acknowledgment indicating the person's or entity's name and the fact that the person or entity has received and read a copy of the injunctive provisions. If the Defendant retains a debt collection agency or law firm to perform the functions of Covered Persons through that entity's officers, partners, employees, or agents, the Defendant shall deliver a copy of this Judgment to each such debt collection agency or law firm and instruct the debt collection agency or law firm to provide a copy of the injunctive provisions to all of its officers, partners, employees, and agents having responsibilities for collecting debt from the Defendant's customers who have filed bankruptcy proceedings and for soliciting and obtaining reaffirmation agreements. The debt collection agency or law firm shall obtain, from the persons receiving a copy of the injunctive provisions, a signed and dated acknowledgment indicating the person's name and the fact that the person has received and read a copy of the injunctive provisions. The Defendant shall obtain from the debt collection agency or law firm a verification that the debt collection agency or law firm has in fact provided copies of the injunctive provisions and obtained the signed and dated acknowledgments as provided in this Judgment. The Defendant and each debt collection agency or law firm shall maintain each original signed acknowledgment for five (5) years. The Defendant shall provide the copy of the injunctive provisions and obtain the required signed acknowledgment within thirty (30) days of the entry of this Agreed Final Judgment as to current Covered Persons and before any new Covered Person makes contact with the Defendant's customer or the Defendant customer's attorney for the recovery of debt from the Defendant's customers who have filed proceedings under Chapter 7 of the Bankruptcy Code. The Defendant shall provide the Attorneys General Compliance Committee with copies of the acknowledgments within a reasonable time of receiving a written request.

M. Following the expiration of the requirements of subparagraph 5.1(L), the Defendant shall provide written materials reflecting the substantive content of the injunctive provisions of this Judgment to all

future Covered Persons not previously subject to subparagraph 5.1(L) before any such Covered Person makes any contact with the Defendant's customer or the Defendant's customer's attorney for the purpose of recovering debt from the Defendant's customers, including customers who have filed bankruptcy proceedings, enforcing any security interest or soliciting or obtaining Reaffirmation Agreements.

N. Except as otherwise provided in paragraph 9.1 herein, the Defendant shall not represent or imply that any procedure or other act or practice hereafter used or engaged in by the Defendant has been approved, in whole or in part, by the Attorney General.

O. Except as otherwise provided in paragraph 9.1 herein, neither the Defendant nor anyone acting on its behalf shall state or imply or cause to be stated or implied that the Attorney General, or any state agency or officer has approved, sanctioned, or authorized any practice, act or conduct of the Defendant.

P. The Defendant shall not participate, directly or indirectly, in any activity to form a separate entity or corporation for the purpose of engaging in acts prohibited in this Judgment or intentionally circumventing any part of this Judgment or the spirit or purposes of this Judgment.

VI. PAYMENTS TO AFFECTED CONSUMERS

6.1 For each Affected Consumer identified pursuant to paragraphs 6.2 through 6.6 herein, the Defendant shall:

A. Relinquish any claim to any unpaid portion of the reaffirmed debt and to any unpaid finance charges, late charges, and credit insurance charges assessed in connection with the reaffirmed debt, and adjust the Affected Consumer's account balance to reflect the relinquishment of the claim;

B. Reimburse the Affected Consumer by check (and not in any other form such as gift certificate, coupon, or account credit) for all money paid on account of the reaffirmed debt and all money paid in finance charges, late charges, and credit insurance charges assessed in connection with the reaffirmed debt until the date compensation under this Article is paid. For the purpose of determining the amount an Affected Consumer paid on account of the reaffirmed debt, all payments made by the Affected Consumer after the date on which the Affected Consumer filed a petition for relief under the Bankruptcy Code shall be deemed first allocated to the payment of the reaffirmed debt until fully paid before being allocated to the payment of any post-petition purchases.

C. Reimburse the Affected Consumer for the lost time-value of the money paid, by providing the Affected Consumer with interest on the amount required under subparagraph 6.1(B) at the rate of 9.1% per annum for the full period for which said monies were held by Defendant;

D. Waive any security interest which the Defendant claims or claimed in goods purchased by an Affected Consumer before the date he or she filed a petition for relief under the Bankruptcy Code and not seek to recover or solicit the surrender of any such pre-petition merchandise.

E. Notwithstanding anything otherwise provided herein, with respect to joint accounts the Defendant shall not be obligated to make payment to more than one Debtor named on such account.

6.2 The Defendant shall use its reasonable best efforts to identify affirmatively every Affected Consumer by conducting an Internal Record Search.

6.3 If the Internal Record Search for a particular person indicates that person entered a Reaffirmation Agreement, the following shall apply:

A. If the Internal Record Search demonstrates the existence of a Conformed Reaffirmation Agreement, that person shall not be deemed an Affected Consumer entitled to restitution under paragraph 6.1.

B. Except as provided in paragraphs 6.3 (C), 6.5 and 6.6, if the Internal Record Search does not demonstrate the existence of a Conformed Reaffirmation Agreement, that person shall be deemed an Affected Consumer entitled to restitution under paragraph 6.6.

C. If the Defendant is unable to determine from an Internal Record Search whether a Conformed Reaffirmation Agreement exists for a particular person because (1) the Defendant does not have possession of an executed Reaffirmation Agreement or (2) the Internal Record Search does not establish either that the Reaffirmation Agreement was timely filed, or when necessary, approved by the bankruptcy court, the Defendant shall conduct an External Record Search, as described in paragraph 6.4, for that person or shall treat that person as an Affected Consumer entitled to restitution under paragraph 6.1.

6.4 The External Record Search with respect to a person described in subparagraph 6.3(C) shall consist of the following:

A. The Defendant shall conduct, or cause to be conducted, an electronic search of bankruptcy court records for that person through the national and appropriate specific-court based PACER system.

B. If the PACER search does not reveal a bankruptcy court file for the person searched that contains either a discharge or dismissal, the Defendant shall obtain from a national credit reporting agency appropriate identifying information, including the person's name (including correct spelling), social security number, address at the time of filing bankruptcy, bankruptcy case number, and the bankruptcy court in which the case was filed, and shall conduct a revised PACER search based upon the supplemental information obtained. If the revised PACER search does not reveal a bankruptcy court file for the person searched that contains either a discharge or dismissal, the Defendant shall also consult with service providers agreed upon with the Attorneys General Compliance Committee that maintain proprietary bankruptcy filing data bases accessed electronically or are experienced in conducting electronic data base searches to assist in the External Record Search.

C. Nothing herein shall prevent the Defendant from searching actual court records or require unnecessarily duplicative searches.

6.5 If the completed External Record Search for a person described in subparagraph 6.3(C) reflects a bankruptcy court docket for court filings in the bankruptcy case for the person searched, the person shall be deemed an Affected Consumer entitled to restitution under paragraph 6.1 if either (A) the PACER or other docket record does not contain an entry indicating the filing of a Reaffirmation Agreement or (B) the PACER or other docket record does not contain an entry of a bankruptcy court order approving the Reaffirmation Agreement when such approval is necessary; otherwise, if the bankruptcy court docket reflects such filing and, when necessary, bankruptcy court approval, the person shall not be deemed an Affected Consumer. A record entry indicating bankruptcy court approval shall be deemed necessary in the event that neither the Internal Record Search nor the External Record Search for the person identifies an attorney who represented the Debtor in connection with the Debtor's bankruptcy case at the time the Reaffirmation Agreement was entered.

6.6 If the completed External Record Search for a person described in subparagraph 6.3(C) is inconclusive (e.g. the person's bankruptcy court case docket for court filings in the bankruptcy case for the person searched cannot be located through an electronic search), the following shall apply:

A. The person shall be deemed an Affected Consumer entitled to restitution under paragraph 6.1 only if the person filed a claim by August 11, 1998 pursuant to a court-approved process, indicating that he or she signed a Reaffirmation Agreement that was not timely filed with the bankruptcy court or was not approved by the bankruptcy court when such approval was necessary.

B. Except as provided in subparagraph 6.6(A), the person shall not be deemed an Affected Consumer entitled to restitution under paragraph 6.1.

6.7 The Defendant shall retain a Settlement Administrator, subject to the approval of the Attorneys General Compliance Committee (which approval shall not be unreasonably withheld), to review the Defendant's compliance with paragraphs 6.1 through 6.6. The Settlement Administrator shall be an independent firm containing one or more certified public accountants that is substantially experienced in the administration of consumer restitution programs.

6.8 The Settlement Administrator shall reasonably determine whether the Defendant has reasonably examined records, reasonably identified Affected Consumers, correctly calculated payment amounts (including the interest prescribed in subparagraph 6.1(C), properly adjusted account balances as required under subparagraph 6.1(A), actually issued payments in the correct amounts to Affected Consumers, paid undeliverable checks as provided in paragraph 6.12, and undertaken the steps represented by the Defendant in its Written Summary, as described in paragraph 6.17. The procedures to be employed by the Settlement Administrator to determine compliance shall be developed by the Settlement Administrator, the Defendant, and the Attorneys General Compliance Committee. The procedures shall include record inspection and statistical sampling, including the sampling of accounts of consumers not

designated as Affected Consumers to determine whether the accounts were properly characterized.

6.9 The Settlement Administrator shall provide the Attorneys General Compliance Committee with a final report no later than December 1, 1999, unless the Attorneys General Compliance Committee agrees in writing to a later date. The final report shall:

A. summarize all tasks undertaken by the Settlement Administrator,

B. set forth the Settlement Administrator's certification that the Defendant complied with the restitutionary provisions of this Judgment to the extent that the Settlement Administrator has found compliance; and

C. detail the Defendant's deficiencies in compliance, if any.

In acting as Settlement Administrator under this Judgment, the Settlement Administrator undertakes to comply with all of the obligations of the Settlement Administrator expressed in this Judgment and shall be deemed to acknowledge that each Attorney General stipulating to the entry of judgment in substantially the same form as this Judgment is an intended user or beneficiary of the Settlement Administrator's final report.

6.10 The Settlement Administrator shall make available to the Attorneys General Compliance Committee, within thirty (30) days of written request, and without claim of privilege (except for the Settlement Administrator's attorney-client privilege), copies of all records, documents, reports, and work papers obtained or prepared in connection with the duties set forth herein, and shall also make available to the Attorneys General Compliance Committee a person or persons familiar with the procedures to be performed as required by this Judgment. If the Defendant has already produced documents responsive to the request, the Settlement Administrator may identify those documents in lieu of providing duplicates. To the extent that the Settlement Administrator performs any of the External Record Search described in paragraphs 6.2 through 6.6 on behalf of the Defendant, the Attorneys General Compliance Committee may, directly or through expert consultants, audit or otherwise review the Settlement Administrator's performance of the External Record Search, and the Settlement Administrator shall fully cooperate with any such audit or review, including providing access to persons and records as hereinabove described.

6.11 To facilitate the Settlement Administrator's responsibilities described in this Judgment, the Defendant shall make available to the Settlement Administrator all documents, persons, and other information reasonably necessary to review the Defendant's compliance with the restitutionary provisions of this Judgment, including the Defendant's processes for identifying Affected Consumers, for calculating and paying refunds, and for writing off reaffirmed debt account balances on the accounts of those Affected Consumers entitled to restitution.

6.12 If any check sent to an Affected Consumer is returned undeliverable, the Settlement Administrator shall take or cause to be taken reasonable steps, including skip-tracing, if reasonable, to attempt to locate

the Affected Consumer. If thereafter the Affected Consumer is still not located (or an Affected Consumer's check is not cashed within six months), any funds payable under paragraphs 6.1 through 6.6 hereof but not deliverable shall, pursuant to this Judgment, be promptly, but in no event later than November 1, 1999, paid to the Attorney General of the state of the last known address of such Affected Consumer if such Attorney General has entered into a judgment substantially similar to this Judgment. Any funds payable under this section herein to any Affected Consumer whose last known address is in the State of Tennessee but not deliverable, pursuant to this Judgment, shall be treated as unclaimed property in the possession of the State of Tennessee pursuant to the Uniform Disposition of Unclaimed Property Act, Tenn. Code Ann. §§ 66-29-101 *et seq.* These funds shall be delivered to the State of Tennessee Treasurer as set forth in Tenn. Code Ann. § 66-29-112, covering miscellaneous unclaimed property held by another person. The Defendant shall provide whatever information is needed by the State of Tennessee Treasurer to handle the funds as unclaimed properties. The Defendant shall continue to provide a check (if appropriate) and this information each year as necessary to provide updated information to the State of Tennessee Treasurer. The Defendant shall provide a report to the Attorney General and Reporter within one (1) year after entry of this Order which details the amount delivered to the State of Tennessee Treasurer for treatment as unclaimed property under the State statute unless such information has already been provided to the Compliance Committee in accordance with this Judgment.

6.13 On or before December 1, 1999, the Defendant shall provide to the Office of the Attorney General, 425 Fifth Avenue North, 2nd Floor, Nashville, Tennessee 37243, Attn: Cynthia Kinser, Deputy Attorney General, Consumer Protection Division (or to such other address or to the attention of such other person as the Attorney General's Office shall specify in writing to the Defendant), a Final Certification Report containing the following information:

A. A certification by the Defendant that all monetary relief provided for herein due to all eligible Affected Consumers in Tennessee has been paid. The report shall also certify compliance by the Defendant and the Settlement Administrator with each provision of this Judgment related to such monetary relief to the extent applicable to each;

B. An alphabetical list of the name and address of every Affected Consumer, as defined herein, residing in Tennessee, together with the total amount of relief as specified in subparagraphs 6.1(A), 6.1(B) and 6.1(C), herein for such Affected Consumer and that the Defendant waives any security interest to the extent provided in subparagraph 6.1(D) with respect to such Affected Consumers.

6.14 The Defendant shall provide for review by the Tennessee Attorney General's Office, within thirty (30) days of a written request, all records, documents and personnel reasonably necessary to ascertain the Defendant's compliance with the monetary provisions of this Judgment as to Affected Consumers in the State of Tennessee (for example, in response to inquiries concerning specific Affected Consumers in Tennessee).

6.15 Nothing in this paragraph shall limit the Attorney General's right to request or obtain information

from the Defendant as otherwise provided in this Judgment or as provided by law.

6.16 The Defendant shall also provide to each member of the Attorneys General Compliance Committee, one copy of each report provided to each of the States Attorney General (who enters into a judgment substantially similar in form to this Judgment) that contains the information described in paragraph 6.13 for that State. Until December 1, 2000, the Defendant shall provide for review by the Attorneys General Compliance Committee, within thirty (30) days of written request, sufficient records, documents, persons, and other information reasonably necessary to ascertain the Defendant's compliance with the restitutionary provisions of this Judgment.

6.17 The Defendant, not later than April 1, 1999, shall provide to the Attorneys General Compliance Committee, a written summary (the "Written Summary") describing the process the Defendant used:

- A. to identify Affected Consumers as required by paragraphs 6.2 through 6.6;
- B. to calculate the amounts owed to Affected Consumers; and
- C. to actually pay those amounts to Affected Consumers and adjust the account balances of Affected Consumers with the amount of the unpaid reaffirmed debt that was relinquished.

6.18 All payments by the Defendant to Affected Consumers provided for by paragraphs 6.1 through 6.6 shall be made not later than April 1, 1999. This obligation and the Defendant's monetary obligations hereunder shall not apply as to any person who does not relinquish, by executing a waiver and release of all claims that the person may have against the Defendant based on the Defendant's obtaining or collecting upon a Reaffirmation Agreement from that person in violation of law in substantially the following form:

"I waive and release the claims I may have against First North American National Bank, their employees, agents and affiliates based on their soliciting, obtaining or collecting upon a Reaffirmation Agreement I entered into with them."

Date: _____ NAME _____

The waiver shall be printed clearly and conspicuously on the back of the payment check above the place for the payee's endorsement and shall indicate that endorsement or encashment of the check constitutes such waiver. The language of the waiver may be modified by the agreement of the Defendant and the Attorney General to the extent necessary to effect a release or the settlement of a claim as provided under Section 3311 of the Commercial Code or other applicable state law.

VII. PAYMENTS TO THE STATES

7.1 On October 13, 1998, Defendant shall pay Three Million Seven Hundred Thousand Dollars

(\$3,700,000.00) to the States Attorneys General, via an electronic bank transfer payable to the Office of the Attorney General of Massachusetts. The Massachusetts Attorney General agrees to hold these monies, in an interest bearing trust account, for distribution among any state that executes a Consent Decree or Agreed Final Judgment with the Defendant in substantially the same form as this Judgment on or before November 19, 1998. This money, including interest accrued, will be distributed to participating states first to reimburse the offices of participating Attorneys General for the actual and reasonable travel expenses incurred in connection with this case that are claimed before October 30, 1998 and then proportionately based upon the number of potentially Affected Consumers in each state identified in the Summary of Affected Accounts By State produced by the Defendant to the Attorneys General of Massachusetts and California on or about July 31, 1998 (for each state, "Proportionate State Share"); provided, however, that the Massachusetts Attorney General shall receive a minimum payment of Forty Thousand Dollars (\$40,000.00) as the result of its substantial commitment of personnel and resources in investigating this matter and negotiating this Judgment. The money, including interest accrued, will be distributed to the participating states not earlier than November 19, 1998. Tennessee's proportionate share of the \$3,700,000.00 shall be used as follows:

A. The sum of Forty Thousand Dollars and 00/100 Cents (\$40,000.00) shall be paid to the State of Tennessee for reasonable and appropriate attorneys' fees and costs of investigation, prosecution and monitoring for compliance of this matter, which may be used for consumer protection purposes at the sole discretion of the Attorney General. Said payment shall be made payable to the "State of Tennessee - Attorney General" and shall be delivered from the funds held in escrow by the Massachusetts Attorney General.

B. The sum of Three Thousand Dollars and 00/100 cents (\$3,000.00) shall be paid to the Tennessee Division of Consumer Affairs to fund consumer education. Said funds shall be distributed at the sole discretion of the Director of the Division of Consumer Affairs. Said payment shall be made by the Massachusetts Attorney General providing the Tennessee Attorney General with a check made payable to the "State of Tennessee - Division of Consumer Affairs".

C. The remaining sums due the State of Tennessee shall be paid to the State of Tennessee's general fund pursuant to Tenn. Code Ann. § 47-18-108(b)(3). Said payment shall be provided from the funds held in escrow by the Massachusetts Attorney General by providing the Attorney General with a check made payable to the "State of Tennessee - General Fund".

7.2 To the extent that any state does not enter a Consent Judgment or Agreed Final Judgment with the Defendant on or before November 16, 1998, unless that date is extended in writing by the Defendant, the Massachusetts Attorney General will return to the Defendant the Proportionate State Share (at the time distribution to the participating States is made) for each such state that does not participate. However, this requirement shall not apply where:

A. The Defendant has failed or refused to execute a Consent Judgment or Agreed Final Judgment in substantially the same form as this Judgment; or

B. Where a State and the Defendant have filed in State Court a Consent Judgment or Agreed Final Judgment but such Judgment has not yet been approved by the Court.

VIII. TERMS OF PAYMENT

8.1 Notwithstanding that all or a portion of the payments and actions required in paragraphs 6.1 through 6.6, 7.1 and 7.2 of the Judgment will also be required by Consent Judgments or Settlement Agreements entered by the Defendant in other courts, the Defendant is required to make those payments or take those actions only once.

8.2 The Parent shall be bound by the injunctive provisions of paragraph 5.1 and the compliance provisions of paragraph 11.1 and shall be subject to the enforcement of these provisions and the remedies for violations thereof (to which the Parent is subject) to the same extent as if it were the Defendant.

8.3 The Parent shall be jointly and severally liable to make restitution and the payment to the states as provided in paragraphs 6.1 through 6.6, 6.12, 7.1 and 7.2; provided, however, that enforcement of this provision shall be stayed until such time, if any, the Defendant fails to make timely restitution and payment as required under this Judgment. Upon the Defendant's full satisfaction of all the requirements of paragraphs 6.1 through 6.6, 6.12, 7.1 and 7.2, this paragraph shall have no further force and effect.

IX. SPECIAL PROVISIONS REGARDING CONSTRUCTION OF JUDGMENT AND GENERAL REPRESENTATIVES AND WARRANTIES

9.1 Nothing in subparagraphs 5.1 (N) or 5.1 (O) shall prohibit the Defendant from stating to persons that the Defendant has entered into a settlement with the Attorney General resolving this Complaint, from stating that any specific action is required by this Judgment, if such is the case, from stating that the Judgment was entered with the Attorney General and the Defendant, or from providing copies of this Judgment to any person upon request.

9.2 The titles and headings of each section of this Judgment are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of the Judgment. The use of the singular shall include the plural, as appropriate, and vice versa.

9.3 Except as otherwise provided herein, nothing in this Judgment shall be construed to limit the authority of the Attorney General to (A) protect the interests of the State of Tennessee, the people of the State of Tennessee, or any resident of Tennessee or (B) bar the Attorney General or any State or other governmental entity from enforcing laws, regulations, or rules against the Defendant.

9.4 Nothing in this Judgment shall prohibit the Defendant from accepting voluntary repayment of a debt pursuant to Section 524(f) of the Bankruptcy Code or any amendment thereto or successor provision of the Bankruptcy Code.

9.5 Nothing in this Judgment shall prohibit the Defendant from offering additional credit to a Debtor who enters into a Reaffirmation Agreement or from billing or collecting from persons who are not determined to be Affected Consumers.

9.6 Nothing in this Judgment shall limit the Attorney General's right to obtain information, documents, or testimony from the Defendant pursuant to any state or federal law, regulation, or rule. Nor shall anything in this Judgment limit Defendant's right to resist any such request by the Attorney General.

9.7 Unless disallowed by the law effective in the state where the action is taken, this Order shall be construed to allow Defendant to send periodic statements and accept payments from Debtors who act to continue to remain current under their credit obligation.

9.8 Nothing in this Judgment shall be construed as relieving the Defendant of the obligation to comply, or prohibit the Defendant from complying, with all applicable state and federal laws, regulations (including the regulatory authority's official published interpretation thereof, such as the Official Staff Commentary to Federal Reserve Board Regulation Z) or rules (including any general or local bankruptcy court rule), nor shall any of the provisions of this Judgment be deemed to be permission to engage in any acts or practices prohibited by such law, regulation, or rule.

9.9 First North American National Bank warrants and represents that it is a proper party to the Agreed Final Judgment.

9.10 First North American National Bank warrants and represents that its name is the true legal name of the entity entering into this Agreed Final Judgment.

9.11 The Defendant represents and warrants that the execution and delivery of this Agreed Final Judgment is its free and voluntary act and that Agreed Final Judgment is the result of good faith negotiations. Defendant has determined that the Agreed Final Judgment is a fair and equitable resolution of the Attorney General's Complaint.

9.12 The parties warrant that they will implement the terms of the Agreed Final Judgment in good faith.

9.13 This Agreed Final Judgment resolves the above-captioned action and the Attorney General of Tennessee will not bring any other action against the Defendant based upon the facts alleged in the Attorney General's Complaint for acts occurring prior to entry of this Agreed Final Judgment.

9.14 This Agreed Final Judgment is not enforceable against the State until approved by the Court. This Agreed Final Judgment may be signed by any Chancellor in the Davidson County Chancery Court.

9.15 This Agreed Final Judgment may only be enforced by the parties.

9.16 The Defendant waives its right to appear at the hearing or ex parte meeting with the Chancellor to obtain approval of this Agreed Final Judgment. The Defendant waives its right to notice and the right to appear at any such hearing or *ex parte* meeting.

9.17 This document shall not be construed against the drafter because both parties participated in the drafting of this document.

9.18 The Defendant represents and warrants that it has authority to act for and bind itself. This Agreed Final Judgment may be executed on counterparts and on multiple signature pages. The parties agree that facsimile signature pages may be submitted to the Court.

9.19 Nothing in this Agreed Final Judgment shall affect the rights of any Tennessee consumer which may exist under the laws of the State of Tennessee except to the extent a consumer signs the waiver pursuant to Paragraph 6.18.

X. PENALTY FOR FAILURE TO COMPLY

10.1 The Defendant understands and acknowledges that the Tennessee Consumer Protection Act, specifically, Tenn. Code Ann. § 47-18-108 (c), provides that knowing violations of this Order shall be punishable by civil penalties and other appropriate relief which the Defendant understands and acknowledges may include contempt and/or the imposition of reasonable and appropriate attorneys' fees for a successful petition by the State.

10.2 The Defendant understands that upon execution and filing of this Order, a subsequent failure to comply with the terms hereof is *prima facie* evidence of a violation subject to civil penalties and sanctions in accordance with the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-108, so long as the action is brought against Defendant by the Attorney General & Reporter of the State of Tennessee and is in connection with the terms of this Order.

XI. MONITORING FOR COMPLIANCE

11.1 Subject to any properly asserted attorney-client privilege and attorney work product claims, and applicable orders of a state court having jurisdiction of the subject matter, Defendant shall make available to the Attorney General, at the Defendant's expense, within thirty (30) days of the Attorney General's written request, or such longer time as may be agreed in writing, copies of all requested documents relating to the Defendant's compliance with this Judgment. In the event the Defendant needs additional time to comply with the document request and cannot agree with the Attorney General on the additional time period, the Defendant may apply to the court for additional time.

XII. RETENTION OF JURISDICTION

12.1 This Court shall retain jurisdiction over the matter for the purposes of enabling any party to this

Judgment to apply to the Court at any time for such further orders or directives as may be necessary or appropriate for the modification (including vacation) of the injunctive provisions herein, interpretation or enforcement of any of the provisions of this Judgment. The injunctive provisions may be modified based on changed circumstances justifying modification, including, without limitation (1) changes in applicable statutes, regulations (including the regulatory authority's official published interpretation thereof), rules (including any general or local bankruptcy court rule) or order of a court; and (2) appellate court decisions establishing binding precedent.

12.2 In the event the Defendant believes that a modification, including termination of this Judgment, is necessary or appropriate, it shall give notice to the Attorneys General Compliance Committee thirty (30) days prior to seeking such modification. The notice shall identify the relief proposed, explain why the Defendant believes the relief proposed is necessary or appropriate and, if the relief sought is a modification, state how the proposed modification would be implemented.

XIII. ENFORCEMENT OF CONTEMPT

13.1 The Attorney General agrees not to initiate any proceeding for contempt for a violation of any of the provisions contained in paragraph 5.1 without first:

A. contacting Defendant's counsel in writing directed to the office of Defendant's general counsel at 9960 Mayland Drive, Richmond, Virginia 23233 and to Bryan Krakauer for First North American National Bank, c/o Sidley & Austin, One First National Plaza, Chicago, Illinois 60603,

B. describing the nature of the alleged violation, and

C. allowing the Defendant a period of thirty (30) days, or such additional time as the Attorney General may agree, both to provide a written response to the allegations and if requested by the Defendant, to meet with the Attorney General's representatives to discuss the alleged violations and alternatives to the initiation of contempt proceedings based on all of the circumstances. The Defendant's written response shall include, at a minimum, an explanation of how the alleged violation(s) occurred, what action the Defendant has taken with regard to the specific customer(s) involved, and details of the corrective steps taken by the Defendant to prevent future violations.

13.2 The Attorney General will not bring a contempt action against any natural person unless that person participates in, knowingly assists, or knowingly aids and abets a violation of the injunctive provisions.

13.3 Nothing herein shall be construed to exonerate any contempt of or failure to comply with any provision of this Order after the date of its entry, to compromise the authority of the Attorney General to initiate a proceeding for any contempt, or to compromise the authority of the court to punish as a contempt any violation of this Order.

XIV. PAYMENT OF COURT COSTS

14.1 All court costs associated with this action shall be borne by the Defendant. Except as otherwise provided herein, each party shall bear its own costs, including attorneys' fees. No costs shall be taxed to the State as provided by Tenn. Code Ann. § 47-18-116.

IT IS SO ORDERED, ADJUDGED AND DECREED.